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September 8, 2008

By ECF and Federal Express

Hon. Marilyn Hall Patel  
Courtroom 15, 18th Floor  
United States District Court  
450 Golden Gate Avenue  
San Francisco, CA 94102

I. Michael Ross v. Tomlab Optimization AB, et al. (Case No. C08-01052 MHP)

Dear Judge Patel:

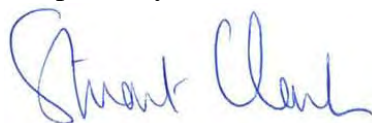
I am writing to you in accordance with the arrangements worked out with your Courtroom Deputy, Mr. Anthony Bowser, that I may submit a one-page letter to you for the purpose of bringing to your attention a discovery dispute that has arisen in this case, and to request directions as to how I should seek to have that issue resolved.

At the Case Management Conference on August 11, 2008 you directed that discovery should be limited to source/object code and "informal discovery for ENE purposes." Pursuant to that direction I wrote to counsel for defendant Rao, Mr. Eletich, informally requesting certain materials, including all source code in the process of evolution from plaintiff Ross' DIDO source code that Rao admits to have had access to and modified through the current GPOCS code. I also asked counsel for Tomlab, Mr. Newhouse, to produce informally the documents that I had, prior to the CMC, formally requested production of. The documents requested include all relevant source code, and communications between Rao and Tomlab, and between them and others about this case.

Mr. Eletich has taken the position that your authorization of limited discovery does not require any party to actually *produce* any documents, but merely had the effect of permitting the parties to conduct their own investigations. Thus, Mr. Eletich refuses to produce any materials that I have requested other than the current GPOCS source code. Mr. Newhouse on the other hand has agreed to produce the requested documents, but he takes the position that your directive permits him to withhold actual production until December 15, 2008, i.e. *until after the ENE/Mediation has occurred*. For obvious reasons, however, this is unhelpful in preparing for the ENE.

I would appreciate your directions as to how I should seek to have this issue resolved.

Respectfully submitted,



Stuart C. Clark